

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**BEDROCK GRAVEL, INC.;
BLAKE WIRTJERS; BUSTER
WIRTJERS; AND JAMES
WIRTJERS;
Buena Vista County, Iowa.**

**AMENDED AND
SUBSTITUTED
ADMINISTRATIVE ORDER**

**NO. 2007-SW-02-A1
NO. 2007-AQ-08-A1**

**TO: Blake Wirtjers
3113 270th St.
Sac City, IA 50583**

**James Wirtjers
1212 Bailey St.
Sac City, IA 50583**

**Buster Wirtjers
3113 270th St.
Sac City, IA 50583**

**Joseph Heidenreich
Dresselhuis and Heidenreich
100 Main St.
Odebolt IA 52458**

I. SUMMARY

This Amended and Substituted Administrative Order (Order) is issued to Bedrock Gravel, Inc. (Bedrock Gravel), Blake Wirtjers, Buster Wirtjers and James Wirtjers, jointly and severally, to resolve violations at the Bedrock Gravel, Inc. salvage yard in rural Buena Vista County, Iowa.

The Order is amended to add Blake Wirtjers, Buster Wirtjers, and James Wirtjers as responsible parties and to incorporate the facts relating to the actions of these three individuals. Subsequent to the issuance of the original Order on April 24, 2007, the Department of Natural Resources (Department) determined that these individuals share culpability for the violations described herein.

Pursuant to this Order Bedrock Gravel shall:

- By June 1, 2008, remove and properly dispose of all waste tires from the Bedrock junkyard located at 6458 Hwy 71, Storm Lake, 50588;
- By June 1, 2008, submit to Department Field Office #3 receipts verifying the proper disposal of all waste tires removed from the subject property; and

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Bedrock Gravel, Blake Wirtjers, Buster Wirtjers and James Wirtjers shall pay an administrative penalty in the amount of \$10,000 which is hereby assessed jointly and severally to all parties. Bedrock Gravel has appealed the terms of this Order. Blake Wirtjers, Buster Wirtjers and James Wirtjers shall pay the penalty within 30 days of the issuance of this order unless a timely appeal is filed pursuant to Division VII of this Order.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Jennifer Christian
IDNR Field Office #3
1900 North Grand
Gateway Mall North
Spencer, IA 51301
Ph: 712-262-4177

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality) and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess penalties.

III. STATEMENT OF FACTS

1. Bedrock Gravel is a business engaged in the production of sand and gravel. Bedrock was the owner of a former salvage yard located at 6458 Hwy 71, Storm Lake, 50588 (the site) during all times relevant to the violations cited in this Order. The site is now owned by Justin Higman. The site contains or has contained at least 1500 waste tires, junk automobiles, machinery, barrels, white goods, and household garbage.
2. Blake Wirtjers, Buster Wirtjers, and James Wirtjers engaged in the removal and sale of recyclable materials at the site, pursuant to the permission of Bedrock.
3. On March 7, 2005, the Department received a complaint from the Newell Fire Chief, Bruce Eric. The complainant stated that the Newell Fire Department had responded to a grass fire at the site on Sunday, March 6, 2005. Upon arrival at the site, the Fire Department found 2 trailers, one building, brush, and numerous tires on fire. The

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fire was extinguished but the Fire Department had to return later to put the fire out again. Chief Erie expressed concern about the fire danger related to the waste tires on the site. The Bucna Vista Co. Sanitarian, Kim Johnson, also inspected the site and reported a large number of waste tires. Photographs were taken by Ms. Johnson.

4. On March 18, 2005, Department Environmental Specialist Jennifer Christian investigated the complaint and spoke with Chad Mohr of Bedrock. Mr. Mohr acknowledged that there were at least 1,500 tires on the site but asserted that Bedrock was in the process of cleaning up the waste. Mr. Mohr asserted that the waste tires would be removed within a few weeks. Bedrock was orally informed of the prohibition against storing more than 499 waste tires without a permit. A Notice of Violation was issued by the Department on May 20, 2005.

5. On November 17, 2005, the Newell Fire Department responded to another tire fire at the site. The fire was reported to the Department on November 18, 2005. Chief Erie reported that approximately 75-100 tires had been burned and that it is the opinion of the Newell Fire Department that the tires were intentionally burned and that Bedrock had made preparations to burn additional tires.

6. On November 18, 2005, the Department investigated the complaint. Ms. Christian identified approximately 75 steel tire rims which showed evidence that a tire had been burned on these rims. The rims were loaded into a trailer for salvage. On that date, Mr. Mohr alleged that Jimmy Wirtjers had started the fire. Mr. Mohr later contacted the Department and indicated that Jimmy Wirtjers had not started the fire. A Notice of Violation was issued to Bedrock on December 5, 2005.

7. On February 6, 2006, the Department conducted a follow-up inspection at the site. It appeared that there were no changes to the site or attempts to achieve compliance.

8. On April 12, 2006, the Department conducted a follow-up inspection at the site. It appeared that there were no changes to the site or attempts to achieve compliance.

9. As of December 7, 2006, there were no changes to the site.

10. On December 18, 2006, a proposed Administrative Order was sent to Bedrock to address the documented violations.

11. On January 18, 2007, Mr. Mohr was contacted by telephone and alleged that Blake Wirtjers, Buster Wirtjers and James Wirtjers had initiated the burning at the site.

12. On January 31, 2007, Bedrock sent a letter to the Department naming Blake Wirtjers, Buster Wirtjers, and James Wirtjers as the individuals committing the violations.

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13. On April 24, 2007, Administrative Order Nos. 2007-SW-02 & 2007-AQ-08 was issued to Bedrock. This Order was appealed by Bedrock Gravel on May 11, 2007. The letter of appeal named Blake Wirtjers, Buster Wirtjers and James Wirtjers as the violators.

14. During the discovery phase of the pending contested case, it was determined that Blake Wirtjers, Buster Wirtjers, and James Wirtjers were the individuals conducting the metal removal at the site and were the individuals that were engaged in the illegal burning of waste tires at the site.

15. The Department has confirmed through the individual who was purchasing metal from the site from Blake, Buster, and James Wirtjers that these individuals were conducting the illegal burning activities.

IV. CONCLUSIONS OF LAW

The following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC Chapters 100-121.
2. Iowa Code section 455B.307(1) and 567 IAC 100.4 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise provided by rule. The above facts disclose violations of these provisions.
3. Iowa Code section 455D.11(1)"d" defines "tire collector" as, in part, a person who owns or operates a site used for the storage, collection, or deposit of more than five hundred waste tires.
4. Iowa Code section 455D.11B and 567 IAC 117.2(2) require persons who store more than 500 waste tires to obtain a permit from the Department. The above-stated facts disclose a violation of these provisions.
5. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC Chapters 20-30 relating to air quality.
6. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The materials burned in this case do not qualify for exemption or variance. The above facts disclose violation of this provision.

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V. ORDER

Pursuant to this Order:

1. By June 1, 2008, Bedrock Gravel shall remove and properly dispose of all waste tires from the Bedrock junkyard located at 6458 Hwy 71, Storm Lake, 50588;
2. By June 1, 2008, Bedrock Gravel shall submit to Department Field Office #3 receipts verifying the proper disposal of all waste tires removed from the subject property; and
3. Bedrock Gravel, Blake Wirtjers, Buster Wirtjers, and James Wirtjers shall pay an administrative penalty in the amount of \$10,000. This penalty is assessed jointly and severally to the named parties. Bedrock Gravel has appealed this Order. Blake Wirtjers, Buster Wirtjers and James Wirtjers shall pay the penalty within 30 days of the issuance of this order unless a timely appeal is filed pursuant to Division VII of this Order.

VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this Order is determined as follows:
 - a. Economic Benefit. Bedrock Gravel, Blake Wirtjers, Buster Wirtjers, and James Wirtjers have achieved an economic benefit from their illegal conduct. Costs avoided include disposal fees, labor, and hauling costs. The open burning of tires can completely avoid these costs. The Buena Vista County solid waste agency charges \$2.50 per tire. Reduced fees are available by contracting directly with a permitted tire recycler or tire hauler. There are a minimum of 1,500 tires remaining on the site. The Buena Vista County Sanitarian has estimated the total number of tires at the site to be closer to 10,000. Using the more conservative estimate and considering the tires that were burned, \$4,000 is assessed for this factor.

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b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. Open burning of tires releases toxic air emissions and can produce run-off that pollutes the surface and ground water of the state. Such open burning may violate ambient air standards. Based on the above considerations, \$3,000 is assessed for this factor.

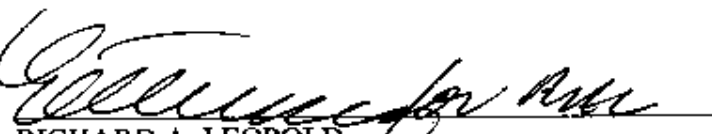
c. Culpability. Blake Wirtjers, Buster Wirtjers, and James Wirtjers intentionally burned waste tires for economic benefit. Bedrock Gravel, Inc. knew or became aware of the illegal activity at the site owned by Bedrock Gravel, Inc. and allowed that activity to occur or continue. The violations were repeated after the involvement of the fire department, the county sanitarian and the Department and notice from one or more of these entities that the burning was unlawful. Based upon these factors, \$3,000 is assessed for this factor.

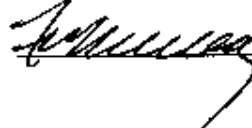
VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.138, 455B.308 and 561 IAC 7.5(1), as adopted by reference at 567 IAC chapter 7, a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 567 IAC chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.


RICHARD A. LEOPOLD
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 29 day of
, 2008

Field Office #3; Jon Tack; VLC; VII, C.1.